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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 DAOL REXMARK UNION STATION
4 LLC, *et al.*

5 Plaintiff,

6 v.

22 CV 06649 (GHW)
Teleconference

7 UNION STATION SOLE MEMBER,
8 LLC,

9 Defendant.

10 New York, N.Y.
11 April 10, 2023
12 12:10 p.m.

13 Before:

14 HON. GREGORY H. WOODS,

District Judge

15 APPEARANCES

16 MORRISON COHEN LLP
17 Attorneys for Plaintiffs
18 BY: RICHARD S. HONG
19 MAHNOOR MISBAH
20 AMBER WILL

21 KASOWITZ, BENSON, TORRES LLP
22 Attorney for Defendant
23 BY: DAVID EVAN ROSS
24 ANDREW BRELAND
25

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(The Court and all parties appearing telephonically)

THE COURT: I'm going to begin by taking appearances from the parties. I'm going to start with counsel for plaintiffs. I'm going to ask the principal person for each side to identify him or herself and the members of their team rather than having each lawyer introduce themselves individually.

Again, let me start with counsel for plaintiffs. Who's on the line for plaintiffs?

MR. HONG: Good afternoon, your Honor. This is Richard Hong from Morrison Cohen, for the plaintiffs. With me are Amber Will and Mahnoor Misbah.

Good afternoon, your Honor.

THE COURT: Thank you very much, good afternoon.

Who's on the line on behalf of defendants?

MR. ROSS: Your Honor, good afternoon, David Ross and Andrew Breland from Kasowitz Benson on behalf of Union Station Sole Member.

THE COURT: Good afternoon. Thank you.

So let me start with a few brief instructions for the parties at the outset.

As you know, this is a public proceeding. Any member of the public or press is welcome to dial in at any time, so I ask you to please keep the possibility that third parties will be auditing this conference in mind.

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1 Second, please state your name each time you speak in
2 the conference. Please keep your line on mute except when
3 you're intentionally speaking to participants on the call.

4 Please abide by instructions by our court reporter
5 that are designed to help her do her job.

6 And I order there be no recording or rebroadcasting of
7 all or any portion of this proceeding.

8 So, counsel, I scheduled this as an opportunity to
9 conclude our conversation from Friday. I'm sorry that we
10 weren't able to finish the work that afternoon, but there were
11 a number of things that I had to do during that window of time,
12 including a number of applications for parole for people to
13 spend time with family for Easter, that I needed to finish by
14 5:00 p.m. So I had to adjourn before I could rule on the
15 disputed issue that brought us together on Friday.

16 So I have had the opportunity to consider the
17 arguments that you presented during the course of that
18 conference as well as the written submissions that you provided
19 to me previously. I think I have a view regarding the, what is
20 appropriate in my view, outcome with respect to these issues.

21 Before I turn to my view of those issues, though, let
22 me hear from each of the parties. Is there anything that
23 either of you would like to add to the arguments that you
24 presented to me during the course of our conference last week?
25 I'll start with counsel for defendant.

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1 Counsel.

2 MR. ROSS: Yes, your Honor, David Ross.

3 Over the weekend, we tried to consider whether there
4 might be a compromise that would further reduce the burden on
5 the plaintiffs in responding to these particular document
6 requests. Here's what we came up with, your Honor:

7 The suggestion is that if there is a concern that the
8 8,000 hits include privileged documents that have not
9 previously been reviewed for privilege, that the plaintiff
10 could run appropriate searches to identify the privileged
11 documents that are included in that, segregate them completely,
12 take the remainder of the documents, and produce them to us,
13 putting the burden on us to go through them to find documents
14 responsive to the requests that we're interested in.

15 The concern that sensitive information is included in
16 that, which Mr. Hong mentioned in his remarks, I think it's
17 addressed by the fact that there's a confidentiality order in
18 place, and we're obviously limited to the use of the documents
19 for this case.

20 As to the privileged documents, they can then be
21 reviewed, and determine those that are responsive to the
22 requests and would be appropriate to put on the categorical
23 privilege log of the kind that they've previously been
24 providing us to.

25 We think that's a reasonable compromise that puts most

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1 of the burden on us to look at documents that may not be
2 responsive and addresses the concerns that have been expressed.

3 Thank you, your Honor.

4 THE COURT: Thank you.

5 Counsel for plaintiffs, anything from you?

6 MR. HONG: Your Honor, we appreciate the latest
7 proposal that the counsel for defense made. I wish he had
8 actually made it over the weekend so we could have thought
9 about it over the weekend and given you a quick answer to it.
10 I think, however, given that we have not had further time to
11 think about this, I still think there will be a significant
12 burden, and we are obviously reluctant to turn over documents
13 without our review -- our appropriate views on it.

14 Even when we tried to limit the burden on us, to the
15 extent that we can, I still think there's a significant burden
16 here. I think if there are ways to minimize that, we certainly
17 would think about that, but I think, as it stands right now,
18 even with the modification, I think the burden is too
19 significant for it.

20 And when you look at the Rule 26 analysis, what the
21 Court needs to look at, balancing obviously the relevant
22 proportionality and the burden, all the things that are
23 required. In this case, the second request that came in three
24 months after the documents were reviewed were just too far. It
25 just does not favor a compelling disclosure of these things.

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1 So for those reasons, as well as what we argued last
2 Friday, as well as what's in our papers, we think that the
3 request should be denied because it is just too broad and too
4 burdensome under the circumstances, your Honor.

5 THE COURT: Thank you very much.

6 Thank you, counsel on both sides, for your arguments
7 and for your submissions. Let me just begin with a few
8 background notes about the legal standard that I applied in
9 considering the application.

10 As the parties know, district courts have wide
11 latitude to determine the scope of discovery. The Federal
12 Rules of Civil Procedure establish liberal limits on the scope
13 of discovery. Rule 26(b)(1) provides:

14 "The parties may obtain discovery regarding any
15 non-privileged matter that is relevant to any parties' claim or
16 defense and proportional to the needs of the case, considering
17 the importance of the issue at stake in the action, the amount,
18 and controversy, the parties' relative access to relevant
19 information, the parties' resources, the importance of the
20 discovery in resolving the issues, and whether the burden or
21 expense of the proposed discovery outweighs its likely benefit.
22 Information within the scope of discovery need not be
23 admissible in evidence to be discoverable." The Federal Rules
24 of Civil Procedure 26(b)(1).

25 "Although not unlimited, relevance for purposes of

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1 discovery, is an extremely broad concept." *Condit v. Dunne*,
2 225 F.R.D. 100, 105 (S.D.N.Y. 2004).

3 "Information is relevant if: (a) it has any tendency
4 to make a fact more or less probable than it would be without
5 the evidence; and (b) the fact is of consequence in determining
6 the action. Relevance is a matter of degree, and the standard
7 is applied more liberally in discovery than it is at trial."
8 *Vaigasi v. Solow Mgmt. Corp.*, 2016 WL 616386, at *11 (S.D.N.Y.
9 Feb. 16, 2016) (internal quotations and citations omitted).

10 While the federal discovery rules are liberal, they
11 are not boundless. The 2015 amendments to the federal rules
12 reemphasize the importance of the "proportionality" of a
13 discovery request to the litigation. And Rule 26(b)(2)(C)
14 requires that a court limit the frequency or extent of
15 discovery if it determines that: "(i) the discovery sought is
16 unreasonably cumulative or duplicative, or can be obtained from
17 some other source that is more convenient, less burdensome, or
18 less expensive; (ii) the party seeking discovery has had ample
19 opportunity to obtain the information by discovery in the
20 action; or (iii) the proposed discovery is outside the scope
21 permitted by Rule 26(b)(1)."

22 In addition, the rules permit a person from whom
23 discovery is sought to make a motion for a protective order to
24 limit discovery. Such a motion must contain a certification
25 that the movant has in good faith conferred with the affected

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1 parties to resolve the dispute. Federal Rules of Civil
2 Procedure 26(c)(1).

3 "The burden of demonstrating relevance is on the party
4 seeking discovery...Once relevance has been shown, it is up to
5 the responding party to justify curtailing discovery."
6 *Trilegiant Corp. v. Sitel Corp.*, 275 F.R.D. 428, 431 (S.D.N.Y.
7 2011) (citation omitted)

8 However, "[g]eneral and conclusory objections as to
9 relevance, overbreadth, or burden are insufficient to exclude
10 discovery of requested information." *Lindsey v. Butler*, 2017
11 WL 4157362, at *3 (S.D.N.Y. Sept. 18, 2017)

12 "Rather, a party requesting discovery has the burden
13 of showing 'specifically how, despite the broad and liberal
14 construction afforded the federal discovery rules, each
15 interrogatory is not relevant or how each question is overly
16 broad, burdensome, or oppressive.'" *Lindsey*, 2017 WL 4157362,
17 at *3.

18 So having considered all of the relevant law and what
19 the parties presented during or conference last Friday and as
20 amplified here today, I do not conclude that the request as
21 initially formulated in the discovery requests propounded by
22 defendant are overly broad or disproportionate to the need of
23 this litigation.

24 Let me say at the outset that the information
25 requested is broadly relevant; that here, neither party has

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1 made an argument that the information sought is irrelevant.

2 And I conclude that the information sought is relevant to the
3 defense's end arguments presented by the defense here.

4 The principal focus of the objection relates to the
5 burden associated with the production of these documents, and
6 as is often the case, it's often presented through the claim of
7 proportionality. Here, counsel for defendant argued during our
8 prior conference that defendant's substantial amount at issue
9 in this case, that even if the cost of the production of this
10 incremental discovery is as counsel described it, such a
11 quantum of discovery should not be considered to be
12 disproportionate to the needs of the case. Fundamentally, I
13 agree with that.

14 This is a commercial dispute at which a substantial
15 amount of money is potentially at issue, as framed by the
16 defense. In light of the nature of the case and the resources
17 of the parties, the quantum and additional labor associated
18 with this work, assuming that it is, as plaintiff's counsel
19 describe, is not, in my view, disproportionate to the needs of
20 the case, nor is the burden here undue.

21 I understand and appreciate what the cost of the
22 discovery here will be, and I accept that it is, as counsel for
23 plaintiff has represented it, but again, that degree of cost is
24 not undue given the nature and scope of this case.

25 I appreciate what I will describe as the compromise

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1 offer made by counsel for defendant. I am not going to order
2 that plaintiff proceed in that way because as Mr. Hong
3 reasonably notes that plaintiff has made requests to know the
4 full content of the documents that they are handing over before
5 they hand them over.

6 However, to the extent that the plaintiffs make the
7 judgment call that a production in the manner outlined by
8 counsel for defendant would not be, I'll call it, problematic
9 from their perspective, and it would save time and therefore
10 money, given that defendants has offered that alternative
11 approach, I would endorse a production that is framed in that
12 way, notwithstanding the fact that the production would not
13 otherwise be compliant with the general rule; which is that
14 productions either be provided in the format in which the
15 records are found or in response to the specific request to
16 which they relate. Here, I understand that defendant is
17 offering to allow plaintiff to essentially provide all of the
18 documents without describing to which specific requests each is
19 responsive.

20 And to the extent that plaintiffs wish to save money
21 by conducting their production in a way that defendant has
22 offered, I authorize that here as a way to permit the parties
23 to save money and time. I'm not, however, ordering it. It
24 will be for plaintiffs to decide how you wish to proceed given
25 the tradeoffs between the two approaches.

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1 It's meaningful for me in determining that the burden
2 is not undue, that defendants made a prior concession which I'd
3 just like to underscore here; namely, that the incremental
4 production will come from the subset of what the parties have
5 described as 8,000 documents that were previously pulled during
6 the search process. In other words, in order to respond to
7 these additional, I'll call it, incremental discovery requests,
8 plaintiffs are not required to conduct additional searches to
9 generate additional documents beyond what we're referring to as
10 8,000 odd documents that were previously identified. So the
11 search here is limited to that previously identified universe
12 of documents.

13 I'd just like to say, you can tell it is implicit in
14 my decision here, I do not believe that it's inappropriate for
15 the defendant to seek to expand upon its discovery requests -
16 having received their response and discovered that their
17 curtailed earlier negotiated approach does not provide them
18 with sufficient information. As you heard me say at the outset
19 of this ruling, I'm concluding that the request as originally
20 formulated is not disproportionate to the needs of the case,
21 and that they are not unduly burdensome.

22 As a result, I just want to underscore that what I am
23 permitting is for discovery to be completed. Using the text of
24 the previously articulated discovery requests propounded by the
25 defendant, to the extent that there is a delta, a difference

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1 between what I described as the framing request presented in
2 this letter and the text of the corresponding discovery
3 request, it is the text of the originally propounded discovery
4 request with which the plaintiff must comply.

5 So that's it. Again, I apologize for not being able
6 to give you this feedback at the end of our conference last
7 week. I just couldn't stay on the line at that time. And I
8 appreciate the parties' willingness to join again today.

9 I'll issue a short order later today, perhaps
10 tomorrow, that embodies this decision.

11 Is there anything else that we need to take up before
12 we adjourn? Let me start with counsel for plaintiffs.

13 Counsel.

14 MR. HONG: Not at this time, but discovery is ongoing,
15 your Honor, so if we have additional issues, we'll raise it at
16 the appropriate time.

17 THE COURT: Good. Thank you very much. I appreciate
18 it.

19 Counsel for defendant.

20 MR. ROSS: No, your Honor. David Ross. No, thank
21 you.

22 THE COURT: Thank you, all.

23 (Adjourned)
24
25